

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2400-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STEVEN T. GEARY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL MOESER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Counsel for Steven T. Geary has filed a no merit report pursuant to RULE 809.32, STATS. Geary has not responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. We therefore affirm the trial court's judgment.

The State charged Geary with interfering with fire fighting, contrary to § 941.12(1), STATS., and resisting an officer, contrary to § 946.41(1), STATS. The case was tried before a jury. Witnesses described how Geary blocked the path of a firefighter and yelled in his face while the firefighter was trying to put out a bonfire at the 1996 Mifflin Street Block Party. The witnesses also described how Geary struggled and resisted when police officers attempted to remove him from the scene and arrest him. Geary admitted his presence at the scene, but denied that he harassed the firefighter or resisted arrest. The jury nevertheless found him guilty on both charges. For resisting arrest, the trial court sentenced him to thirty days in jail with nineteen days of sentence credit. On the interference charge, the trial court sentenced him to a six-month consecutive jail sentence, with all but thirty days suspended if Geary completed an alcohol treatment program.

The jury heard sufficient evidence to convict Geary. We affirm a conviction if the evidence, when viewed most favorably to the verdict, would allow a reasonable jury to find guilt beyond a reasonable doubt. *See Fells v. State*, 65 Wis.2d 525, 529, 223 N.W.2d 507, 510 (1974). Here, the issue was very straight forward. Either the jury believed the testifying police officers and firefighters, in which case Geary's guilt on both counts was plainly established beyond a reasonable doubt, or it believed Geary. The jury evidently believed the testifying officers, and its decision on their credibility is not subject to review. *See State v. Toy*, 125 Wis.2d 216, 222, 371 N.W.2d 386, 389 (Ct. App. 1985).

The trial court properly exercised its sentencing discretion. Sentencing lies within the trial court's discretion, and a strong public policy exists against appellate interference with that discretion. *See State v. Haskins*, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The trial court is presumed to have acted reasonably, and the defendant has the burden to show

unreasonableness from the record. *Id.* Here, the trial court stated that it would have placed Geary on probation had Geary not refused that option on the record. Instead, Geary requested a thirty-day jail sentence. The maximum prison time Geary faced was two years and nine months. Under these circumstances, and given Geary's previous record and the nature of his conduct, he cannot reasonably contend that the trial court imposed an excessive sentence. Additionally, not only did the trial court consider proper factors, but it fully explained its reliance on them at the sentencing hearing.

Appellate counsel identifies no other potentially meritorious issues. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we also identify no other potentially meritorious issues. Any further proceedings would therefore be frivolous and without arguable merit. Accordingly, we affirm the judgment of conviction and relieve Geary's counsel of any further representation of him in this matter.

By the Court.—Judgment affirmed.

